

SECRET

DPD-0987-60

NEGOTIATED CONTRACT

CONTRACT NO. CT-511

Granger Associates  
966 Commercial Street  
Palo Alto, California

1- CT-511  
2- Contractor  
3- B. in  
4- [redacted]  
5- R. in  
6- [redacted]

Contract for: See Schedule

Performance Period:  
See Schedule

Mail Invoices to:

Performance Period:  
See Schedule

Administrative Data:

This contract is entered into by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the above named Contractor which is a corporation, incorporated in the State of California hereinafter called the Contractor.

The parties hereto agree that the Contractor shall furnish the facilities and deliver all supplies and perform all the services set forth in the attached schedule issued hereunder, for the consideration stated therein.

The rights and obligations of the parties to this contract shall be subject to and governed by the attached schedule and General Provisions. In the event of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

IN WITNESS WHEREOF, the parties hereto have executed this contract

as of FEB 18 1960 1960.

Signatures:

GRANGER ASSOCIATES

THE UNITED STATES OF AMERICA

BY

Contracting Officer



TITLE

President

SECRET

Contract No. CT-511

CERTIFICATE

25X1 I, , certify that I am  
25X1 the Assistant Secretary of the Corporation named  
as Contractor herein; that  who  
signed this contract on behalf of the Contractor was then  
President of said Corporation; that said contract  
was duly signed for and in behalf of said Corporation by authority of  
its governing body, and is within the scope of its Corporate powers.

25X1  (Corporate Seal)

SECRET

Contract No. CT-511

INDEX OF SCHEDULE

PART I	- ARTICLES AND SUPPLIES TO BE FURNISHED.....	4
PART II	- PROCEDURE FOR PRICING.....	5
PART III	- DELIVERY.....	6
PART IV	- INSPECTION AND ACCEPTANCE.....	6
PART V	- PERIOD OF PERFORMANCE.....	6
PART VI	- ESTABLISHMENT OF A PRICING FORMULA.....	6
PART VII	- FUNDS ALLOTTED.....	6
PART VIII	- WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS.....	7
PART IX	- SPECIAL SECURITY RESTRICTIONS.....	7

SECRET

Contract No. CT-511

SCHEDULE

PART I - ARTICLES AND SUPPLIES TO BE FURNISHED

(a) The Contractor shall furnish to the Government such equipment, spare parts, modification kits, components, and data for equipment of types which are being or may hereinafter be manufactured by the Contractor, as the Government may call for hereunder. Quantities of the supplies to be furnished shall be determined as hereinafter provided.

(b) From time to time, the Government will furnish to the Contractor, Production Lists, numbered serially, setting forth the items which the Government desires to procure, together with the desired delivery schedule and preservation, packaging, packing and marking requirements therefor. Each such Production List shall set forth therein the estimated dollar amount thereof. Supplies of a critical nature in Production Lists shall be earmarked with an asterisk preceding the part number and the Contractor agrees to achieve earliest possible delivery of such items. The Contractor will promptly delete from said lists any items rendered obsolete by design changes and insert in lieu thereof superseding and interchangeable items, if any, in the same or lesser quantities, as appropriate. Upon acceptance or after these deletions and insertions, if any, the request will be an Approved Production List. The Contractor will immediately transmit six (6) copies of the Approved Production List, together with any pertinent information concerning the superseded items and any superseding non-interchangeable items to the Contracting Officer and his duly authorized representatives so that superseding parts numbers can be procured on subsequent Production Lists. The Contractor will be obligated to furnish the items in the quantities listed therein, and subject to its rights elsewhere specified in this contract, the Government will be obligated to take delivery of the items so furnished on an Approved Production List. Where Approved Production Lists do not contain a quantitative delivery schedule, the Contractor shall forward direct to the Contracting Officer, an interim schedule indicating the estimated date of delivery of critical supplies. The Contractor is hereby authorized to make delivery in advance of the schedule appearing on any Approved Production List under this Contract.

(c) If it appears to the Contractor at any time that the total price of the total quantity of items covered by any or all Approved Production Lists is likely to exceed the funds allotted hereunder in PART VII, the Contractor shall notify the Contracting Officer and the authorized representative of the amount of such excess. Within thirty (30) days after receipt of such notice, the Government will either notify the Contractor it has taken action to increase the funds allotted, or will notify the Contractor of the items or quantities to be deleted

SECRET

Contract No. CT-511

from such Approved Production Lists in order to bring it within the dollar amount thereof. If the Government fails to act within said thirty-day period, the Contractor shall submit to the Contracting Officer and the authorized representatives a recommendation of the parts to be deleted to bring the Approved Production List within said dollar amount and the Contracting Officer shall approve or disapprove such recommendations within ten (10) days after receipt thereof. If the Contracting Officer fails to act within said ten (10) day period, the recommendation of the Contractor shall be deemed to have been approved and the Production Lists shall be modified accordingly. If the Government deletes items or quantities from an Approved Production List, such action shall be considered a partial termination under the clause hereof entitled "Termination for Convenience of the Government."

## PART II - PROCEDURE FOR PRICING

(a) As soon as possible after receipt by the Contractor from the Contracting Officer of a Production List, but in no event more than sixty (60) days after such receipt, the Contractor shall prepare and submit to the Contracting Officer a Proposed Priced Exhibit, numbered the same as the Approved Production List with the unit and total prices and delivery schedule covering the items shown thereon. A reproducible original and at least six (6) copies of the Proposed Priced Exhibit will be prepared and shall be delivered promptly by the Contractor to the Contracting Officer. The reproducible and three (3) copies shall carry at the end thereof, a certificate manually signed by an officer or other person authorized to bind the Contractor, stating that the prices therein represent a firm quotation. Each such Exhibit shall require the written approval of the Contracting Officer stating the prices therein are fair and reasonable. Each such Exhibit shall set forth therein the total dollar amount.

(b) If the Proposed Priced Exhibit is approved by the Contracting Officer it shall be a numbered exhibit to the contract. If the Contracting Officer and the Contractor fail to agree on Prices in the Proposed Priced Exhibit, the failure to agree shall be deemed a disagreement as to a question of fact which shall be disposed of in accordance with the clause thereof entitled "Disputes." The Contracting Officer shall reduce to writing by a Proposed Priced Exhibit his decision, containing prices he believes fair and reasonable. The prices decided by the Contracting Officer shall be paid upon all deliveries, pending final decision of the dispute.

(c) Upon approval of any Priced Exhibit, the Contracting Officer shall deliver a copy thereof to the Contractor and forward one copy thereof bearing his written approval to the Finance Officer responsible for making payments under this contract. Upon Government's acceptance of delivery of any of the items listed on an Approved Priced Exhibit, the Contractor shall be entitled to be paid therefor at the prices shown on the Approved Priced Exhibit.

SECRET

Contract No. CT-511

(d) The Contractor shall be paid upon the submission monthly of properly certified invoices or vouchers, for partial deliveries accepted by the Government, or, when requested by the Contractor payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000.00 or 50% of the total amount of the Approved Priced Exhibit.

### PART III - DELIVERY

Deliveries shall be made in accordance with the delivery schedules set forth in the Approved Priced Exhibits as may be generated under this contract from time to time.

### PART IV - INSPECTION AND ACCEPTANCE

All supplies and services to be furnished under this contract shall be shipped F.O.B. destination in accordance with shipping instructions to be issued at a later date. Inspection and acceptance of the supplies or services called for herein, shall be made by the Government at destination.

### PART V - PERIOD OF PERFORMANCE

(a) Production Lists shall be issued only during the period 1 February 1960 through 30 June 1960.

(b) The Government is granted the right and option of renewing or extending this contract for any additional periods of time. This option to extend will be exercised by issuance of an Amendment to this contract.

### PART VI - ESTABLISHMENT OF A PRICING FORMULA

The parties hereto shall negotiate and establish a fixed pricing method for certain periods of time. The agreed upon formula(ae) shall be set forth in an amendment hereto.

### PART VII - FUNDS ALLOTTED

(a) For the purposes of this contract there has been allotted the following amounts:

<u>Period</u>	<u>Amount</u>	<u>Total Amount</u>
1 Feb 1960 - 30 Jun 1960	\$5,000.00	\$5,000.00

SECRET

Contract No. CT-511

(b) When preparing invoices, Contractor shall indicate thereon as minimal information the Proposed Priced Exhibit Number, the line item number, quantity, unit price and total prices of items payment is being claimed for.

(c) All Depot Purchase Requests or Contracting Officer authorizations received prior to the end of a period should be charged to the funds allotted for that period notwithstanding the preparation of the Proposed Priced Exhibit, work performed and invoices submitted after close of the period.

(d) Contractor will indicate on final invoices that such invoice is its final claim for that period and inform the Contracting Officer of the unexpended amount. Unexpended funds at the end of a period are not authorized for use in a subsequent period. If, at any time, the Contractor is of the opinion that the cost of such work will exceed the amount set forth above, it shall notify the Contracting Officer in accordance with the provisions of paragraph (c) of PART I.

#### PART VIII - WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS

Notwithstanding the requirements of any of the General Provisions of this contract to the contrary, whensoever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

#### PART IX - SPECIAL SECURITY RESTRICTIONS

The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and the work thereunder except as the Contractor is directed or permitted to reveal such information by the Contracting

SECRET  
Contract No. CT-511

Officer or by his duly authorized representative for security matters, and notwithstanding any clause or section of this contract to the contrary, the Contractor shall not interpret any clause or section of this contract as requiring or permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.



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Production List No. \_\_\_\_\_ To Contract No. \_\_\_\_\_

FROM: \_\_\_\_\_  
(Authorized Representative)

TO: \_\_\_\_\_  
(Contractor)

THROUGH \_\_\_\_\_  
(Contracting Officer)

Item No.	Part No.	Nomenclature	Qty.	Estimated Cost	Remarks
-------------	-------------	--------------	------	----------------	---------

Preservation, Packing, Packaging and Preservation:

Delivery: Shipment of above parts is desired in \_\_\_\_\_.

APPROVED: \_\_\_\_\_  
(Date)

SIGNED: \_\_\_\_\_  
(Authorized Representative)

Exhibit No. \_\_\_\_\_ To Contract \_\_\_\_\_  
Date \_\_\_\_\_

FROM: \_\_\_\_\_  
(Contractor)

TO: \_\_\_\_\_  
(Contracting Officer)

Item No.	Part No.	Nomenclature	Qty.	Unit Price	Total Price
1	5-6724130	Pulse Stretcher	25	10.00	\$250.00

Delivery: Shipment of above parts to be made in March 1958

Prices are fair and reasonable and this Exhibit is hereby approved.

\$ \_\_\_\_\_

SIGNED: \_\_\_\_\_  
(Contracting Officer)

Contractor warrants prices conform to the price formula in effect on date of this Exhibit.

SIGNED: \_\_\_\_\_  
(Contractor)

## INDEX TO GENERAL PROVISIONS

<u>Article No.</u>		<u>Page No.</u>
1.	DEFINITIONS-----	1
2.	CHANGES-----	1
<del>3.</del>	<del>EXTRAS-----</del>	<del>2</del>
4.	VARIATION IN QUANTITY-----	2
5.	INSPECTION-----	2
6.	RESPONSIBILITY FOR SUPPLIES-----	3
<del>7.</del>	<del>PATENTS-----</del>	<del>3</del>
8.	ASSIGNMENTS OF CLAIMS-----	4
9.	ADDITIONAL BOND SECURITY-----	4
10.	FEDERAL, STATE, AND LOCAL TAXES-----	4
11.	DEFAULT-----	6
12.	DISPUTES-----	8
13.	SOVIET CONTROLLED AREAS-----	8
14.	EIGHT-HOUR LAW OF 1912-----	9
15.	WALSH-HEALEY PUBLIC CONTRACTS ACT-----	9
16.	NONDISCRIMINATION IN EMPLOYMENT-----	9
17.	OFFICIALS NOT TO BENEFIT-----	10
18.	COVENANT AGAINST CONTINGENT FEES-----	10
19.	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT-----	10
20.	AUTHORIZATION AND CONSENT-----	15
21.	NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT-----	15
22.	BUY AMERICAN ACT-----	15
23.	FILING OF PATENT APPLICATIONS-----	16
24.	PATENT RIGHTS-----	17
25.	REPORTING OF ROYALTIES-----	21
26.	RIGHTS IN DATA - UNLIMITED-----	23
27.	MILITARY SECURITY REQUIREMENTS-----	24
28.	UTILIZATION OF SMALL BUSINESS CONCERNS-----	25
29.	EXAMINATION OF RECORDS-----	25
30.	GRATUITIES-----	26
31.	CONVICT LABOR-----	26
32.	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES-----	26
33.	MATERIEL INSPECTION AND RECEIVING REPORT-----	26
34.	SUBCONTRACTS-----	27
35.	SUBCONTRACTS-----	27
<del>36.</del>	<del>AIRCRAFT IN THE OPEN-----</del>	<del>27</del>
37.	INSPECTION AND AUDIT-----	28
38.	GOVERNMENT-FURNISHED PROPERTY-----	28

<u>Article No.</u>		<u>Page No.</u>
39.	SUPERSEDING SPECIFICATIONS-----	35
40.	DELAY IN DELIVERY OF DATA-----	35
41.	QUALITY CONTROL SPECIFICATION-----	35
42.	ADDITIONAL TAX PROVISION-----	35
43.	SHIPMENTS-----	36
44.	TIME FOR ISSUANCE OF PRODUCTION LISTS-----	37
45.	FORMS-----	37
46.	CERTIFICATE OF ACCEPTANCE-----	37
47.	ALTERATIONS IN CONTRACT-----	38

## GENERAL PROVISIONS

### 1. DEFINITIONS (ASPR 7-103.1)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except at otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

### 2. CHANGES (ASPR 7-103.2)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following; (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract whether changed or not changed by any such order an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 60 days from the date of receipt by the Contractor of the notification of change; PROVIDED, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

~~3. EXTRAS (ASPR 7-103.3)~~

~~Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.~~

4. VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

5. INSPECTION (ASPR 7-103.5)

(a) all supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to the inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this

contract: PROVIDED, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

#### 6. RESPONSIBILITY FOR SUPPLIES (ASPR 7-1C3.6)

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### ~~7. PAYMENTS (ASPR 7-103.7)~~

~~The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial~~

~~deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract.~~

8. ASSIGNMENT OF CLAIMS (ASPR 7-103.8)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U. S. Code 203, 41 U. S. Code 15) if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and re-assigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential", be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: PROVIDED, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer

(c) The Contractor shall obtain the written authorization of the Contracting Officer prior to the assignment of any rights under this contract.

9. ADDITIONAL BOND SECURITY (ASPR 7-103.9)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

10. FEDERAL, STATE, AND LOCAL TAXES (ASPR 11-401.1)

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional



supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to the contract on the tax inclusive date, except taxes, (other than Federal transportation taxes) from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price, and, if freight is included in the contract price, Federal transportation taxes are likewise included.

(c) (1) If the Contractor is required to pay or bear the burden

(i) of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b) or was specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or of any interest or penalty thereon, the contract price shall be correspondingly increased; PROVIDED, that the Contractor warrants in writing that no amount for such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and PROVIDED further that liability for such tax, duty, rate increase, interest, or penalty tax, was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax involved.

(4) Nothing in this paragraph, (c) shall be applicable to social security taxes; net income taxes; excess profit taxes; capital stock taxes; Federal transportation taxes, except changes in the rate thereof, including repeal; pertaining to shipments from the Contractor to the

Government; unemployment compensation taxes; or any State and local taxes, except those levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract, including gross income taxes, gross receipts taxes, sales and use taxes, excise taxes, or franchise or occupation taxes measured by sales or receipts from sales.

(5) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax; PROVIDED that evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e)(1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

#### 11. DEFAULT (ASPR 7-103.11)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i)(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: PROVIDED, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of

default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. Except as otherwise provided in this contract, this paragraph (e) applies only if this contract is with a military department

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

12. DISPUTES (ASPR 7-103,12):

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently, with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: PROVIDED, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. SOVIET CONTROLLED AREAS (ASPR 6-403):

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule and this subparagraph (b), in all subcontracts hereunder.

14. EIGHT-HOUR LAW OF 1912 (ASPR 12-303.1)

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324-326) and is not covered by the Walsh-Healy Public Contracts Act (41 U. S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

15. WALSH-HEALY PUBLIC CONTRACTS ACT (ASPR 12-604 mod)

If this contract is for the manufacture of furnished of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect, "except that the Contractor shall not be required to include this clause in subcontracts issued hereunder when the inclusion of this clause in a subcontract would jeopardize or conflict with the security considerations established in connection with this contract.

16. NONDISCRIMINATION IN EMPLOYMENT (ASPR 12-802 mod)

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials, "and except as insertion of the foregoing provision in a subcontract would jeopardize or conflict with the security considerations established in connection with this contract."

17. OFFICIALS NOT TO BENEFIT (ASPR 7-103.19)

No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

18. COVENANT AGAINST CONTINGENT FEES (ASPR 7-103.20)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

19. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (ASPR 8-701)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) terminate all orders and subcontracts to the extent that they relate to their performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontract; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause; (6) transfer titled and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, PROVIDED, however, that the Contract (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, PROVIDED that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.



(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (1) hereof;



(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above).

(iii) A sum equal to 2% of that part of the amount determined under (i) which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8% of the remainder of such amount but the aggregate of such sums shall not exceed 6% of the amount determined under subdivision (i) above, which amount for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonable necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph (e) (1) and paragraph (e) (2) (i), the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(7).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the Statement of Principles for Consideration of Costs set forth in Part 4 of Section VIII of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e)

above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments on account theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

20. AUTHORIZATION AND CONSENT (ASPR 9-102.1)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodies in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

21. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT (ASPR 9-104)

The provisions of this clause shall be applicable only if the amount of this contract is in excess of \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

22. BUY AMERICAN ACT (ASPR 6-104.5)

(a) In acquiring end products, the Buy American Act (41 U. S. Code 10 a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

### 23. FILING OF PATENT APPLICATIONS (ASPR 9-106)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Officer for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential" a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

#### 24. PATENT RIGHTS (ASPR 9-107.1)

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means by invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either

(A) in the performance of the experimental, developmental, or research work called for or required under this contract: or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; PROVIDED that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b)(1) The Contractor agrees to and does hereby grant to the Government irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in the use of any method. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licenses in the license fields.

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel;

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(i) above; and

(iii) the practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(ii)(B) or (d)(iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) interim reports, at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c)(i) above, the Contractor shall do the following:

(i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the right of the Contractor specified in (e) below to file foreign applications, and subject further to the reservation of a non-exclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d)(ii) above; and

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall have the exclusive rights to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer. The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the



reservation of a non-exclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c) (iii) above;

(ii) written disclosures for all Subject Inventions required by (c) (i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above or in accordance with such final reports or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below. The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of this Patent Rights clause in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept the Patent Rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer, and upon obtaining such authorization, shall cooperate with the Government in the negotiation with such subcontractor of an acceptable patent rights clause; PROVIDED, however, that the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.



(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish the Contracting Officer a copy of such clause, and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary, and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain in accordance with (g) above a suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and an increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract.

Such request shall specifically state that the Contractor has used all reasonable effort to obtain such qualified subcontractor, and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to deny in writing such request, the requirement shall be deemed to have been waived by the Government. If within such period the Contractor shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract providing for termination for the convenience of the Government.

## 25. REPORTING OF ROYALTIES (ASPR 9-110 mod.)

The provisions of this clause shall be applicable only if the amount of the contract is in excess of \$50,000.

(a) The Contractor shall report in writing (in quadruplicate) to the Contracting Officer as soon as practicable after execution of this contract whether or not any royalties in excess of \$250 have been paid or are to be paid by the Contractor directly to any person or firm in connection with the performance of this contract. If royalties in excess of \$250 have been paid or are to be paid to any person or firm, the report shall include the following items of information with respect to such royalties (including the initial \$250)

(1) The name and address of each licensor to whom royalties in excess of \$250 have been paid or are to be paid,

(2) The patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties,

(3) The manner of computing the royalties consisting of (i) a brief identification of each royalty-bearing unit or process, (ii) the total amount of royalties, and (iii) the percentage rate or dollars and cents amount of royalties on each such unit or process; PROVIDED, that if the royalties cannot be computed in terms of units or dollars and cents value, then other data showing the manner in which the Contractor computes the royalties.

(b) In lieu of furnishing a report under paragraph (a), the Contractor may furnish a single, consolidated report for each accounting period of the Contractor during which the Contractor has contracts with the Government, provided the Contractor has requested and obtained the prior written approval of the .....\*. Such consolidated report shall be furnished, when the furnishing thereof has been approved, in the number of copies as approved, as soon as practicable after the close of the accounting period covered by the report. Such consolidated report shall be made in accordance with Contractor's established accounting practice and shall include, for the accounting period, the total amount of royalties accruing to each licensor at a rate in excess of \$1,000 per annum on the Contractor's over-all business, together with (i) the name and address of each such licensor, (ii) the patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties, (iii) a brief description of the subject matter of the license under which royalties are charged, (iv) the percentage rate or unit amount, or if the royalties do not accrue by rate or unit amount, such other data showing the manner by which the royalties accrue to licensor, and (v) an estimate or approximation (without detailed accounting) of the portion of such royalties that may be attributable to Government contracts. The Contractor shall, if requested by the Government, furnish at Government expense a more detailed allocation of such royalty payments attributable to Government contracts.

(c) In the event that the Contractor requests written approval to furnish consolidated reports under paragraph (b) above, the Contracting Officer shall promptly consider the request and furnish to the Contractor a letter stating whether or not the request is approved and, notwithstanding any such approval, the Contracting Officer shall have the right to question any such subsequently furnished report as to accuracy or completeness of data and ask for additional information. The Contractor shall furnish a copy of such letter of approval to the Contracting Officer administering this contract.

(d) After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, further payment shall be withheld until a reserve of either (i) ten percent (10%) of such amount or (ii) \$5,000, whichever is less, shall have been set aside, such reserve or the

balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer the report called for by paragraph (a) hereof or the copy of the letter approving the Contractor's request to furnish the report under paragraph (b); PROVIDED, that no amount shall continue to be withheld from payment for the causes specified in the paragraph (d) if the Contracting Officer shall find that the Contractor has not been furnished a letter as required by paragraph (c) within a reasonable time after making written request to submit a single, consolidated report under the provisions of paragraph (b) of this clause; and PROVIDED further that the Contracting Officer may, in his discretion, order payment to be withheld in the amount and manner above provided if the report called for by paragraph (a) is unsatisfactory or if the report called for by paragraph (b) is due but has not been received, or if received, is found to be unsatisfactory. No amount shall be withheld under this paragraph when the minimum amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any right accruing to the Government under this contract.

## 26. RIGHTS IN DATA - UNLIMITED (ASPR 9-203.1)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses and other information incidental to contract administration.

(b) Subject to the proviso of (c) below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(c) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, non-exclusive and irrevocable license throughout the world, to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; PROVIDED that with respect to such Subject Data not originated in the performance of this contract but which is incorporated in the work furnished under this contract such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of the Subject Data furnished under this contract, of all invasions of the right of privacy contained therein and of all portions of such Data copied from work not composed or produced in the performance of this contract and not licensed under this clause.

(e) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(f) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate or ignore any such marking.

## 27. MILITARY SECURITY REQUIREMENTS (ASPR 7-104.12)

(a) The provisions of this clause shall apply to the extent that this contract involves access to security information classified "Confidential" including "Confidential--Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254).

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through its authorized representative, determine that the Contractor has not complied with such requirements, the Government shall inform the Contractor in writing of the proper actions to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classification or requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified security information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

#### 28. UTILIZATION OF SMALL BUSINESS CONCERNS (ASPR 7-104.14)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

#### 29. EXAMINATION OF RECORDS (ASPR 7-104.15 mod.)

(a) The Contractor agrees that the Contracting Officer or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

30. GRATUITIES (ASPR 7-104.16)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; PROVIDED, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

31. CONVICT LABOR (ASPR 7-104.17)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

32. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (ASPR 7-105.3)

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

33. MATERIEL INSPECTION AND RECEIVING REPORT (ASPR 7-105.7)

At the time of each delivery under this contract the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Materiel Inspection and Receiving Report (DD Form 250 or comparable form). The government shall furnish the required forms to the Contractor upon request.

34. SUBCONTRACTS (AFPI 7-4030)

No contract shall be made by the contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without written approval of the Contracting Officer as to sources.

35. SUBCONTRACTS (AFPI 7-4042)

If this contract provides for price redetermination, the following additional provisions shall apply to subcontracts:

(a) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract.

(b) The Contractor shall not, without the prior written consent of Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five (5%) of the total amount of this contract or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

(e) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

~~36. AIRCRAFT IN THE OPEN (ASPR 10-404)~~

~~(a) Subject to the definitions and limitations prescribed in this clause, the Government assumes the risk of damage to or loss or destruction of aircraft\* in the open; PROVIDED, that such damage, loss, or destruction is caused by any of the following perils:~~



(i) ~~Fire, lightning, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by any agent of any such government, power, authority, or forces; or~~

(ii) Other peril of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or a prevailing practice in the industry in which the Contractor is engaged with respect to similar property.

(b) For purposes of this clause:

(i) The term "Aircraft" means the aircraft to be furnished to the Government under this contract, including complete aircraft; and aircraft in the course of manufacture or modification, including engines, instruments, subassemblies, parts, and equipment installed therein, or in process of installation, and all uninstalled property withdrawn from stores for installation in aircraft in the open or temporarily removed from such aircraft, provided such uninstalled property is in the open.

(ii) The term "in the open" means located wholly outside of buildings or roofed structures.

(c) The Government's obligation under this clause shall extend only to aircraft in the open under conditions approved by the Contracting Officer, and shall not extend to the following:

(i) loss, destruction, or damage resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the maintenance, repair, protection, and preservation of aircraft in the open, in accordance with sound industrial practice. The term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operation at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract;

(ii) loss, destruction or damage to aircraft in the possession or control of any subcontractor, except to the extent that the subcontract, with the approval of the Contracting Officer and consistent with this clause, may otherwise provide.



~~-----~~ (d) ~~The Contractor warrants that the Contract price does not and will~~ not include any charge or reserve for insurance (including self-insurance funds or reserves) covering damage to or loss or destruction of aircraft in the open caused by any of the perils set forth in paragraph (a) hereof,

(e) In the event of damage to or loss or destruction of aircraft in the open, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order, and furnish to the Contracting Officer a statement of:

- (i) the lost, destroyed, or damaged aircraft;
- (ii) the time and origin of the loss, destruction, or damage;
- (iii) all known interests in commingled property of which aircraft in the open are a part;
- (iv) the insurance, if any, covering any part of the interest in such commingled property.

The Contractor shall be reimbursed for expenditures made by it in performing its obligations under this paragraph, to the extent approved by the Contracting Officer and this contract shall be modified in writing accordingly.

(f) If prior to acceptance by and delivery to the Government any aircraft in the open is lost, destroyed, or damaged due to any of the perils set forth in paragraph (a) hereof, the Government may, unless otherwise provided in this contract, elect to require that such aircraft be replaced by the Contractor or restored by the Contractor to the condition in which it was immediately prior to such damage. If the Government requires the aircraft to be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. Alternatively, the Government may elect to terminate this contract as to any such lost, destroyed, or damaged aircraft, and in that event the rights of the parties shall be as provided in the clause entitled Termination for Convenience of the Government.

(g) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage to or loss or destruction of any aircraft in the open caused by any peril set forth in paragraph (a) hereof for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

~~(h) Any loss or destruction of, or damage to, property furnished by the Government will be governed by the clause of this contract entitled "Government-Furnished Property," to the extent that such clause is, by its terms, applicable.~~

~~(i) Any loss, or destruction of, or damage to, aircraft occurring in connection with operations of said aircraft will be governed by the clause of this contract entitled "Flight Risk," to the extent that such clause is, by its terms, applicable.~~

37. INSPECTION AND AUDIT (AFPI 7-4023)

(a) The Contractor agrees that its books and records and its plants, or such part thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

38. GOVERNMENT-FURNISHED PROPERTY (ASPR 13-502)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions

for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished property shall remain in the Government. Title to Government-furnished property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for the Control of Government Property in the Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract (Rev. No. 33, 5/14/58.)

(d) The Government-furnished property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) (i) Except for loss, destruction, or damage resulting from a failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished property as required by

paragraph (e) hereof, and except as specifically provided in clause (s) . . . . . of this contract or in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(I) Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or

(ii) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-Furnished property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-Furnished property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; (III) a separate and complete major industrial operation in connection with the performance of this contract.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished property caused by any excepted peril.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished property from further damage, separate the damaged and undamaged Government-furnished property, put all the Government-furnished property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished property (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(iv) With the approval of the Contracting Officer after loss of destruction of or damage to Government-furnished property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished property in accordance with the provisions of this contract, the Government-furnished property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-Furnished property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-Furnished property for the benefit of the Government.

(vii) (Where applicable). In the event any aircraft are to be furnished under this contract, any loss or destruction, of, or damage to, such aircraft or other Government-furnished property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks", to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished property is located.

(h) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor shall be in writing.

39. SUPERSEDING SPECIFICATIONS

All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

40. DELAY IN DELIVERY OF DATA

(a) It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data is not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default," withhold payment to the Contractor for any of the amounts then due, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of the contract for default to the extent and in the manner authorized by said clause, and may take any or all of the foregoing actions separately or in combination.

(b) The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

41. QUALITY CONTROL SPECIFICATION

Except as otherwise provided in this contract, the Contractor's system of quality control during the performance of this contract shall be in accordance with the provisions of Military Specification MIL-Q-5923, as in effect on the date of this contract, incorporated herein by reference, unless this contract is one of the types specified in paragraph 1.2 of said specification.

42. ADDITIONAL TAX PROVISION

The term "contract date" under the clause hereof entitled "Federal, State and Local Taxes" shall also be deemed to refer to the date of approval of the respective Exhibits or Spare Parts Change Requests submitted pursuant to this contract.



43. SHIPMENTS

(a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f.o.b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f.o.b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost-reimbursement contracts which do not exceed (i) 1000 pounds if shipped by rail, truck, or freight forwarded, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) Consignment Instructions. Consignment instructions shall be made by the Authorized Representative on the respective Production List.

(e) Shipping Instructions. If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) Routing Instructions. If not otherwise provided herein and deliveries are other than f.o.b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the Contracting Officer.

(g) Notice of Shipments. At the time of delivery of any shipment



of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

(h) Computation of Delivery Time. For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) Shipments by the Government. Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f.o.b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f.o.b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractor's shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

#### 44. TIME FOR ISSUANCE OF PRODUCTION LISTS

No new Production List shall be issued under this contract after the date set forth in the Schedule unless such time is extended by written agreement of the parties hereto.

#### 45. FORMS

Attached hereto are samples of the format for Production Lists and Exhibits to which the parties hereto shall conform in the preparation of such instruments.

#### 46. CERTIFICATE OF ACCEPTANCE

(a) At the option of the Contracting Officer any of the supplies or services to be furnished hereunder may be accepted without prior Government inspection upon receipt of a certificate of the Contractor attached to an invoice for said supplies or services reading substantially as follows:

"I hereby certify that I did, on the \_\_\_\_ day of \_\_\_\_\_

1960, (ship via \_\_\_\_\_, in accordance with shipping instructions issued by the Contracting Officer, the supplies called for by Contract No. (insert contract number) \_\_\_\_\_; that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications) or (complete the services called for by Contract No. (insert contract number) \_\_\_\_\_, item \_\_\_\_\_; that such services were in the quantity and of the quality called for, and were in all respects in accord with applicable specifications). This statement is furnished to support payment of the attached invoice."

(b) Notwithstanding any provisions of the certificate above referred to, and notwithstanding the provisions of paragraph (c) of the clause hereof entitled "Inspection" or "Inspection of Supplies and Correction of Defects" as the case may be, the liability of the Contractor with respect to supplies accepted by the Government under the provisions of paragraph (a) above will, after inspection by the Government or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud, or such gross mistakes as amount to fraud.

#### 47. ALTERATIONS IN CONTRACT

The following alterations were made in this contract prior to signature thereof by the parties to this contract:

- (a) Article No. 3, entitled Extras, is deleted in its entirety.
- (b) Article No. 7, entitled Payments, is deleted in its entirety.
- (c) Article No. 36, entitled Aircraft In the Open, is deleted in its entirety.
- (d) To Article No. 26, Rights In Data-Unlimited, the following subparagraph (h) is added

(h) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that

the Contractor has protected such information from unrestricted use by others.